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NOTICE

FROM THE WESTERN SHOSHONE NATION
TO THE U.S. DEPARTMENT OF ENERGY
MAY 3, 2004

The Western Shoshone Nation's objections to the proposed railroad corridor from Caliente, NV to the proposed Yucca Mountain siting of high level nuclear waste from across the United States. This objection is made by the Western Shoshone Nation (the entity that entered into the Treaty of peace and friendship made on October 1, 1863 in Western Shoshone Territory at Bah Ga Zoo, otherwise known by the U.S. as Ruby Valley) through its government, the Western Shoshone National Council, that has been in continuous existence from time immemorial to the present.

The Western Shoshone Government has been asking the United States Government since early in the 20th century to reveal how it legally and lawfully acquired the territory of the Western Shoshone Nation. In the Western Shoshone case, to this day, the United States Government has not shown how it purportedly acquired their Territory.

Listed below are the laws, ratified by the United States Government, that bind the United States to the legal procedures that they must adhere to in lawful acquisition of any Indian Nation's Territory. In their claimed acquisition of the Western Shoshone Territory, they have not shown documentation of compliance with these laws to this day.

LAND ACQUISITION UNDER UNITED STATES LAW

- 1) The 1787 Northwest Ordinance (still in effect) states in part, that: "The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; ... laws founded in justice and humanity shall, from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."
- 2) The 1834 Trade and Intercourse Act (still in effect, as codified in various sections of the U.S. Code) restricts authority to make land transactions with Indian Nations. Section 11 specifically prohibits "any person" from making "a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe." Section 12 provides that "no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribes of Indians, shall be of any validity in law or equity, unless the same is made by treaty or convention entered into pursuant to the Constitution."
- 3) The 1841 Preemption Act (repealed in 1891) tried to legalize squatters on lands not owned by the United States. This act was not used in Western Shoshone Territory.
- 4) The 1848 Treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico has been used by the United States as a justification for Western Shoshone Territorial acquisition. In fact, the only thing Mexico conveyed to the U.S. with this Treaty was the claim that it purported to hold over portions of various Indian nations' territory – the right of discovery, a common agreement between the European nations not to infringe on another nation's discovery.

"Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes..." (Underline added.) "Comprehend" in this sense is defined as "thought to be" or "understood" and "future" is defined as "not with this treaty but at some later time." "Now occupied" is defined as "having total control." One of the savage tribes referred to in this Treaty is the Western Shoshone Nation.

5) The 1861 Nevada Territorial Act, passed by the U.S. Congress, referred to the 1787 Northwest Ordinance and stipulated that Indian lands "shall be excepted out of the boundaries, and constitute no part of the Territory of Nevada." The territory of Nevada did not include "rights of persons or property pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty with the United States and such Indians." In connection with this, the Western Shoshone have not found a Treaty of Territorial land cession to the United States. Upon the creation of the Territory of Nevada, the Western Shoshone were never consulted as to whether their Territory would be included.

6) The 1863 Ruby Valley Treaty between the Western Shoshone and the United States was only one of peace and friendship. This Treaty did not cede land to the United States. This is the only nation to nation contact between the two nations. Treaties are only made between independent nations and by treating with the Western Shoshone, the United States recognized it as an independent nation. The power for the United States to enter into binding treaties with other nations is stated in Article 6 of the U.S. Constitution:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any state to the contrary notwithstanding.

Federal Courts, in 1986 and again in 1989, verified that the 1863 Treaty between the Western Shoshone Government and the United States is in full force and effect. [U.S. v. Mary Dann and Carrie Dann, D. Nevada, #C-R-74-60 BRT (1986); 873 F.2d 1189 (9th Cir. 1989)].

LAND ACQUISITION BY DECLARED WAR

If the Western Shoshone did not cede land to the United States, the only other method of territorial acquisition is conquest by war. The 1787 Northwest Ordinance, Article 3, states: "the Indians property, rights, and liberty...never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress..."

If the United States contends that it acquired Western Shoshone Territory by war, then the United States, according to the above law, must provide documentation that this happened, including the date war was declared, the date and location of the final battle, the terms of surrender, and the name of the Western Shoshone war chief who signed the surrender terms.

LAND ACQUISITION BY U.S. SUPREME COURT

The United States Government has tried to say that Western Shoshone land title was taken through the U.S. v Dann litigation. In 1974, the United States brought a lawsuit in U.S. District Court, Nevada, against two Western Shoshone sisters, Mary and Carrie Dann, for purportedly grazing cattle on so-called "public land" without a grazing permit from the Bureau of Land Management. The Dann sisters' position was that no permit was needed from the United States because the land they grazed on was still Western Shoshone Territory. This case bounced around in U.S. Federal District Courts, and U.S. Appeals Courts for a number of years, finally reaching the U.S. Supreme Court in 1984.

In 1946 the US. Congress had passed the Indian Claims Commission Act which created a special jurisdiction for Indian tribes, for a temporary period of time, to bring claims against the United States. In 1951 a Western Shoshone federally recognized tribe (a creation of the United States under the 1934 Indian Reorganization Act) filed a claim against the United States under this Act. This filing began the undermining of the position of the Dann sisters. After its creation, the Indian Claims Commission's term was extended from time to time by the U.S. Congress, until finally it came to an end in 1978 when Congress did not extend the life of the Act. When the Indian Claims Commission ended, the U. S. Court of Claims took up its incomplete cases, the Western Shoshone case, Docket 326-K, being one of them. In late November of 1979 the US Court of Claims said that it had completed Docket 326-K along with an award of some \$26,000,000 to the Western Shoshone. Based on this, the U.S. Treasury transferred the monetary amount to the U.S. Secretary of the Interior who, as the purported trustee, accepted the monetary award on behalf of the Western Shoshone. Although a final report was required under the Act, no such final report was issued by the Indian Claims Commission or by the U.S. Court of Claims.

When U.S. v Dann reached the U.S. Supreme Court in 1984, the acceptance of the monetary distribution by the U.S. Secretary of Interior in 1979 was used by the Supreme Court as evidence of payment for Western Shoshone Territory despite the lack of the final report. With rendering the decision against the Danns, the Supreme Court referred to the final report that did not exist. Although full compliance with the law of the Indian Claims Act was incomplete, the Supreme Court ruled without question as if it were. The Supreme Court found that the Danns could not defend their position using the unextinguished status of Western Shoshone Territory. Because of the failure of the United States to provide documented compliance with the above presented lawful procedures, the U.S. Supreme Court can not make a lawful ruling, pretending due process has occurred. The territorial title of the Western Shoshone remains unlitigated and therefore continues in Western Shoshone ownership.

INTERNATIONAL ORGANIZATIONS' FINDINGS

In 2002, the Organization of American States (OAS), after a lengthy ten-year review of the process of the U.S. Indian Claims Commission, found, in regard to Western Shoshone Docket 326-K, that the Commission violated due process of law, property rights, and human rights against the Western Shoshone. Upon the completion of its findings, the OAS notified the U.S. State Department of the violations and called upon the U.S. Government to rectify the violations before the report would be released to the public. Then, in January, 2003, after the U.S. did not

respond, the OAS made its report public. The U.S. to this day has not moved to rectify the situation and has ignored the report. The finding of the OAS substantiates the Western Shoshone contention that the Indian Claims Commission did not render justice to the Western Shoshone in Docket 326-K.

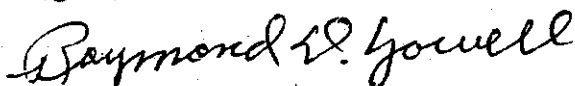
In May, 2003 the organization, Amnesty International, upon its review of the Indian Claims Commission process in regard to Western Shoshone Docket 326-K, found the U.S. guilty of the same violations that the OAS had found in the areas of due process, property rights, and human rights against the Western Shoshone. Thereupon, they issued their report to the public. This again supports the Western Shoshone contention that the Indian Claims Commission did not render justice to the Western Shoshone in Docket 326-K.

WESTERN SHOSHONE OPPOSITION

Based on the above-referenced U.S. laws, and the findings of two international organizations, substantiating the Western Shoshone position that Western Shoshone Territory has not been taken by the United States, the Western Shoshone Nation opposes the transportation and proposed storage of high-level nuclear waste within the Western Shoshone Territory. The 1863 Treaty of Peace and Friendship is the only agreement between the Western Shoshone and the United States. The Treaty does not provide for transportation or storage of high-level nuclear waste within Western Shoshone Territory. Both the proposed rail corridors and Yucca Mountain are within Western Shoshone Territory. Therefore, the proposed rail corridors planned to haul high level nuclear waste from various points throughout the United States to the proposed high level nuclear waste repository at Yucca Mountain cannot be granted by the Western Shoshone Nation because, as put forth in this notice, the United States has not and can not produce evidence that it has title to the lands.

Respectfully submitted by the Western Shoshone Nation, through its Government, the Western Shoshone National Council.

Signed,



Raymond D. Yowell, Chief
Western Shoshone National Council

cc: George W. Bush, President, United States of America
Colin Powell, U.S. Secretary of State
U.S. Nuclear Regulatory Commission
Koffie Annan, Secretary General, United Nations
Nevada Office of Nuclear Waste